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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4

5 ROBERT SHORTY AVERY,

6 Plaintiff,

7 v.

8 DAVITA DIALYSIS CENTER, et al.,

9 Defendants.

Case No.16-cv-07061-JD

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

Re: Dkt. Nos. 1, 10

10 Pro se plaintiff Robert Avery, who has been granted IFP status, has sued Renal Treatment
11 Centers - California, Inc., DBA Clearlake Dialysis (“Clearlake Dialysis”) (originally sued as
12 “Davita Dialysis Center et. al.”) and John Fuch for a “deprivation of rights” related to a treatment
13 he received. Dkt. No. 1. The complaint is dismissed with leave to amend. 28 U.S.C.
14 § 1915(e)(2)(B)(i) and (ii).

15 **DISCUSSION**

16 Even liberally construed, the complaint does not provide “a short and plain statement of
17 the claim showing that the pleader is entitled to relief” as required by Rule 8(a)(2) of the Federal
18 Rules of Civil Procedure. The handwritten complaint is a discursive narrative about something
19 that appears to have happened in November 2016 between Avery and a nurse, a technician, and
20 another patient at the Clearlake Dialysis Center. It is not possible to find in the complaint any
21 facts explaining why Avery is suing or a clear statement of his legal claims. Avery filed a late
22 opposition to the motion to dismiss that mentions 42 U.S.C. § 1983 and possibly the ADA, but
23 even if those untimely statements are considered, they do not fix the pleading deficiencies in the
24 complaint. Dkt. No. 15 at 2-5.

25 Consequently, the complaint is dismissed with leave to amend. Avery may file an
26 amended complaint no later than **October 20, 2017**. Defendants need not move to dismiss the
27 amended complaint. The Court will review it on its own. Avery is encouraged to consult with the
28 Federal Pro Bono Project’s Legal Help Center in either of the Oakland or San Francisco federal

1 courthouses for assistance. The San Francisco Legal Help Center office is located in Room 2796
2 on the 15th floor at 450 Golden Gate Avenue, San Francisco, CA 94102. The Oakland office is
3 located in Room 470-S on the 4th floor at 1301 Clay Street, Oakland, CA 94612. Appointments
4 can be made by calling (415) 782-8982 or signing up in the appointment book located outside.

5 **IT IS SO ORDERED.**

6 Dated: September 20, 2017

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JAMES DONATO
United States District Judge